RECEIVED

JUN 1 0 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
Federal Communications Commission
1919 M St., N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

ACTA PETITION RELATING) RM No. 8775.
TO "INTERNET PHONE" SOFTWARE AND)
HARDWARE)

REPLY COMMENTS OF
THE CONSUMER PROJECT ON TECHNOLOGY
ON THE ACTA PETITION RELATING TO
"INTERNET PHONE" SOFTWARE AND HARDWARE

June 10, 1996

1. The Consumer Project on Technology (CPT) is a non-profit organization which was started by Ralph Nader to promote consumer interests in matters concerning the development of new technologies, including information technologies. CPT filed comments in the first round of this proceeding. (http://www.essential.org/cpt/telecom/acta.txt). Today we respond to the initial comments by the large incumbent local exchange carriers (LECs) and inter-exchange carriers (IXCs).

2. The United States Telephone Association (USTA), PacBell, US West, Southwestern Bell (SBC), AT&T, Sprint and other large LEC and IXC interests have told the Commission that the original ACTA petition on Internet Telephony was flawed, because it sought inappropriate government regulation of software development. But each of these entities are asking the Commission to end the so called "Enhanced Service Provider" (ESP) exemption. The ESP exemption now includes Internet Service Providers (ISPs), as well as other value added network services.

3. The Consumer Project on Technology (CPT) raised the issue of reform on network access fees in several recent FCC proceedings, including our May 8, 1996 comments on the ACTA petition on Internet Telephony. Under the current system, the incumbent LEC (companies such as Bell Altantic, NYNEX, US WEST, PacBell, etc) receive hefty fees from IXCs (companies like AT&T, Sprint, etc), based upon per-minute charges for long distance telephone calls. Last year these charges averaged 5.7 cents per minute. These fees, which are far far higher than the actual costs of a network connection, are designed to lower the fixed monthly cost of a telephone subscription, at the expense of higher usage charges for long distance calling. Some persons believe that this is an equitable system, because long distance calls are discretionary, and minutes of calling tend to increase with income. A number of groups have proposed imposing these fees on ESPs. For example, Southwestern Bell suggests the Commission could "immediate eliminate the ESP exemption and subject

No. of Copies rec'd 029

ESPs to the same access charge structure that currently applies to interexchange carriers . . .ESPs could then choose whether to implement measures to distinguish traffic, whether to pay access charges on all traffic, or whether to cease mixed use operation until traffic could be distinguished." [Comments of Southwestern Bell Telephone Company, May 8, 1996, page 8, RM No. 8775]. CPT disagrees.

4. There are many problems with the current system of per-minute fees. Most fundamental, they are based upon an older idea of how a network is used. The current per-minute fees are based upon voice telephony. They do not vary by time of day. They do not account for how the network is managed. They fail to provide the LEC with incentives to better manage its scarce resources. The per-minute fees are based upon estimates of the consumer's willingness to pay, rather than network costs. They have led to highly inefficient underutilization of the public switched network. Specifically, consumers face very high per-minute charges for using long distance voice services, particularly during off-peak hours, and they have basically abandoned the public switched network for long distance data calls.

5. Proposals to end the ESP exemption from the network access fees and impose a new system of per-minute charges and surveillance on Internet usage are deeply flawed and should be rejected by the Commission. The Commission should indeed undertake reform of the system of per-minute access fees, but the purpose of this reform should be to eliminate the current system per-minute charges, which should be replaced by fees which more closely reflect network cost structures. Specifically, with most costs of the network fixed, the fees should more closely reflect the *capacity* to *use* the network, rather than *usage* itself, particularly when true usage costs are trivial, and when the costs of metering are high relative to other costs.

6. In the unregulated markets for Internet service, cellular telephony (with no price regulation on local service) and for private lines, one observes pricing far different than in the regulated long distance telephony market. Many Internet service providers, including AT&T and MCI, now offer flat rate Internet pricing. Many cellular operators now offer free calling in off-peak hours. Private lines are often priced at a flat rate. IXCs cannot offer consumers free off-peak calling, because they must pay hefty per-minute fees to the LECs, even in the middle of the night or on weekends. As a result of this inefficient regulatory system, lower-income consumers cannot fully benefit from time-shifting for long distance telephony.

7. In the Commission proceeding on Universal Service, CPT pointed out that discretionary long distance services are an important element of a consumer's telephone bill, even for low income consumers. **Table 1** presents data on the average cost of residential telephone bills, by quintile.

Table 1
How do Phone Bills Differ by Income?

Income Quintile	Average Monthly Bill*	Toll & Discretionary*	Percent of Average Monthly Bill
Poorest	43.70	25.00	57%
2nd	48.40	29.70	61%
3rd	53.40	34.70	64%
4th	57.10	38.40	67%
Richest	70.70	52.00	74%
White $ Other	54.40	35.80	66%
Black	64.00	45.30	71%

* For 1992.
Source: SRCI

8. As noted in our Universal Service comments, it is important to observe that the poorest consumers spend 57 percent of their average monthly telephone bill for toll and discretionary services. For blacks, the percent is 71 percent. Indeed, blacks pay significantly more for discretionary services than do non-blacks, as measured in dollars or as a percentage of the total bill. CPT believes that many low income consumers would benefit greatly from more efficient network pricing systems. This will be particularly true for consumers who have large families living in different cities.

9. With regard to data services, the flaws in the current system of network access fees are even more apparent. The per-minute charges assume that consumers will infrequently use the network. For data services, the ideal is for consumers to maintain "open connections" to a wide area network, such as the Internet, with very little correlation between time online and time transferring files or other data. What is needed is a network which allocates "bandwidth on demand," but which also allows semi-permanent digital connections to the network.

10. Pricing should not be based upon minutes of a connection to a network, as has been suggested by Southwestern Bell and others. Indeed, consider Southwestern Bell's May 8, 1996 comments to the Commission in this docket: "The Commission's goal must be to permit the telecommunications industry to reach the objective of "a minute is a minute" pricing for the same or similar network functionalites." [Page 7]. This infatuation with per-minute charges is inappropriate for a network that should deliver voice and data services for a wide range of uses, particularly when the "cost" of providing services are highly non-linear, based upon high fixed costs and trivial usage costs. If Southwestern Bell was operating in a competitive environment, it wouldn't even propose a system based upon per-minute fees.

11. CPT, Intel and many others have urged state regulators to push the LECs to reengineer their local exchange services to reflect the new ways the network should be used. In Utah, Virginia, New Jersey, Maryland, and elsewhere CPT is asking regulators to require the LECs to report to the regulators on new ways to manage network bandwidth. One such proposal would have the LEC use the open "D" channel to signal the need for open ISDN "B" channels, on a "as needed" basis. Other proposals would have local loops terminate into optional packet switched transport services. The Commission should not do anything that will remove incentives to adopt more efficient network management systems.

12. The Commission should also do nothing that will require ESPs to engage in surveillance of network usage, or require Internet Service Providers to measure network usage. There are non-trivial costs to such surveillance. At a May 17, 1996 workshop at Columbia University's Columbia Institute for Tele-Information (CITI), on the Impact of Cybercommunications on Telecommunications, George Vinall, from Cable & Wireless reported that his firm reckoned that it cost $20 per month to offer a flat rate Internet account, but if the account was metered for usage, he estimated it would cost $24 per month extra in metering expenses, or more than the total cost of the unmetered account. The actual costs of metering are unknow, but most experts consider this an important and non-trivial issue.

June 10, 1996

Sincerely,

James Love, Director
Consumer Project on Technology
love@tap.org
P.O. Box 19367
Washington, DC 20036
http://www.essential.org/cpt
202/387-8030; fax 202/234-5176